APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 14,022

WALTHAM PRECISION INSTRUMENT COMPANY, INC., a corporation, formerly known as Waltham Watch Company, Waltham Watch Company, a corporation, and JOSEPH AXLER and MELVIN AXLER, individually and as former officers of said corporations, *Petitioners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*.

Final Decree Affirming and Enforcing Order to Cease and Desist

Waltham Precision Instrument Company, Inc., a corporation, formerly known as Waltham Watch Company, Waltham Watch Company, a corporation, and Joseph Axler and Melvin Axler, individually and as former officers of said corporations, petitioners herein, having filed in this Court on December 19, 1962, a petition for review praying that the order to cease and desist issued against them by the Federal Trade Commission, respondent herein, on October 16, 1962, in a proceeding before it entitled "In the Matter of Waltham Precision Instrument Company, Inc., et al., Docket 6914" be modified or the complaint dismissed; and a copy of said petition having been served upon respondent; and the respondent having thereafter certified and filed in this Court a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument on December 9, 1963, and this Court having rendered its decision on January 8, 1964, affirming said order and commanding obedience to the terms thereof:

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed that the prayer of the aforesaid petition for review to modify the order of the Federal Trade Commission or to dismiss the complaint be, and it hereby is, denied;

It Is Further Ordered, Adjudged and Decreed that the order to cease and desist of the Federal Trade Commission be, and it hereby is, affirmed, and that petitioners be, and they hereby are, commanded forthwith to obey said order and to comply therewith.

By the Court.

s/ John S. Hastings
Chief Judge

s/ Wm G. Knoch
United States Circuit Judge

s/ Latham Castle
United States Circuit Judge

A True Copy:
Teste:

Kenneth J. Carrick
Clerk of the United States Court of Appeals for the Seventh Circuit.

Entered:

APPENDIX B

Final Order.

BEFORE THE FEDERAL TRADE COMMISSION.

(Caption—6914)

Commissioners:

Paul Rand Dixon, Chairman.
Sigurd Anderson,
William C. Kern,
Philip Elman,
Everette MacIntyre

FINAL ORDER.

Respondents having filed, under Section 4.22(c) of the Commission's Rules of Practice, exceptions to the proposed order in this proceeding, reasons in support thereof and a proposed alternative form of order, and counsel supporting the complaint having filed a reply opposing said exceptions and

The Commission having determined that respondents have not given sufficient grounds for modification of the proposed order, and that said order should be entered and adopted as the Final Order of the Commission:

It is Ordered, that respondents' exceptions to the proposed order be, and they hereby are, denied.

278 It Is Further Ordered that respondents, Waltham Precision Instrument Company, Inc., a Massachusetts corporation, formerly known as Waltham Watch Company; Waltham Watch Company, a Delaware corporation; and Joseph Axler and Melvin Axler, individually and as former officers of said corporations, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or dis-

tribution of watches in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing in any manner, directly or indirectly, including any use of a number in the name or names of their watches, that watches manufactured or sold by them containing a designated number of jewels, unless said watches actually contain the stated number of jewels, each and every one of which serves a purpose of protecting against wear from friction by providing a mechanical contact with a moving part at a point of wear.

2. Using the name "Waltham" in advertising or in labeling to designate or describe watches manufactured or sold by them, without expressly, clearly, conspicuously, and prominently stating in immediate connection therewith the country of origin of each component of said watches which is not entirely manufactured in the United States.

3. Using, in advertising or labeling watches manufactured or sold by them, the terms "America's first watch", "the first American watch company", "American", or any similar word or expression, to describe respondents or such watches.

4. Furnishing any means or instrumentality to others whereby the public may be misled as to any of the matters or things prohibited by the above provisions of this order.

It Is Further Ordered that the allegation of the complaint that respondents' use of the term "ruby" in describing the stones in their Resevoil device violated Section 5 of the Federal Trade Commission Act be, and it hereby is, dismissed.

279 It Is Further Ordered that the complaint, insofar as it relates to individual respondents Irving H. Stolz, Seth Harrison and Frank Silver, be, and it hereby is, dismissed.

It Is Further Ordered that respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission.

Joseph W. Shea,
Secretary.

Issued: October 16, 1962.

APPENDIX C

BEFORE FEDERAL TRADE COMMISSION

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
William C. Kern
Philip Elman
Everette MacIntyre

Docket No. 6914

In the Matter of WALTHAM PRECISION INSTRUMENT COMPANY, INC., a corporation, formerly known as WALTHAM WATCH COMPANY, WALTHAM WATCH COMPANY, a corporation; and JOSEPH AXLER, MELVIN AXLER, IRVING H. STOLZ, SETH HARRISON and FRANK SILVER, individually and as officers or former officers of said corporations.

OPINION OF THE COMMISSIONER

By Commissioner Elman:

This case is before the Commission on cross-appeals from the initial decision of the hearing examiner.[1]

In 1956 respondents Joseph and Melvin Axler, and others associated with them, acquired control of the Waltham Watch Company, a Massachusetts corporation. Joseph and Melvin Axler became respectively, president and executive vice-president, and members of the board of directors, of the corporation. In the same year the Waltham Watch Company licensed Hallmark, Inc., to use the trademark "Waltham" on watches sold by it in the United States.

About July 1, 1957, the Waltham Watch Company, by means of a "spin off", transferred its watch business to

[1] The examiner also dismissed the complaint as to three of the individual respondents, Irving H. Stolz, Seth Harrison and Frank Silver. No appeal was taken from that action.

a new Delaware corporation which adopted the same name. The Massachusetts corporation was renamed the Waltham Precision Instrument Company, Inc. Joseph and Melvin Axler became president and vice-president, and members of the board of directors, of the Delaware corporation.

In 1959 the Waltham Watch Company of Delaware was merged with Hallmark, Inc., under the name Waltham Watch Company. At this time the Axlers terminated their association with the company.

Most of the advertising and labeling in the record in this proceeding was disseminated during the existence of the Massachusetts corporation as the Waltham Watch Company, and while this company was controlled by the Axlers who served as its chief executive officers. The Commission concurs; therefore, in the examiner's finding that the Axlers and the Massachusetts corporation, now known as the Waltham Precision Instrument Company, Inc., are proper parties respondent herein and were properly made subject to the order to cease and desist. The Waltham Watch Company of Delaware is also properly subject to this order, not only because it succeeded to the watch business of the Massachusetts corporation but because, as the record shows, the deceptive advertisement of Waltham watches was continued by Hallmark, Inc., which is now merged with Waltham Watch Company of Delaware.

I.

The record shows that respondents' "Waltham" watches contain 17-jewel movements imported from Switzerland to which have been added a so-called "Resevoil" device containing eight additional synthetic stones. These watches were advertised and labeled as 25-jewel watches. The following examples are noted by the examiner:

"Waltham Premier 25"

"The 25-jewel Premier by Waltham"

"The 25 jewel Premier group has patented oil reserve jewels, a horological development that adds 8 extra ruby jewels to the customary 17 friction-bearing jewels." The complaint alleges, and we find, that by these statements "respondents have represented, directly or by implication, that said watches contain 25 jewels, each of which serves a mechanical purpose as a frictional bearing, that is, each jewel provides a mechanical contact at a point of wear."

It is uncontested that only the 17 jewels contained in the imported movements of respondents' watches come in contact with any other moving parts at points of wear. Respondents claim, however, that the 8 stones in the Resevoil device perform a useful function in reducing friction in that they retain oil and distribute it to the bearings over which they are located; and, therefore, that the description of these stones as jewels and their inclusion in the total number of jewels contained in Waltham watches is not deceptive.

An identical contention was rejected by the Commission in *Allen V. Torneck Company*, 55 F.T.C. 1770 (1959). That case, like this one, involved the advertisement of stones contained in the patented "Resevoil" device as jewels. Although the "Resevoil" device in *Torneck* was covered by an earlier patent and contained only four synthetic stones, they were located in the same places over the wheel bearings of the watch and were claimed to have the same lubricating function as the eight stones in the "improved" device. The Commission considered the function of "jewels" used in watch movements and the understanding of the meaning of this term in the trade. It found that "Jewels are used [as bearings] instead of some other material because of their extreme hardness, their ability to take a high polish, and their relative imperviousness to wear and changes in temperature." In addition to bearing jewels, watches also frequently contain so-called "roller" and

"pallet" jewels which come in contact with moving parts, although intermittently, at points of wear. These jewels are also used because of their hardness and resistance to wear. The Commission concluded that the meaning of the term "jewel" in the watch industry is determined by the function which these synthetic stones perform. It stated that "The experts who testified on the subject, although they may have used different terminology, all appeared to agree that every jewel in the traditional 17-jewel and 21-jewel watch is a friction bearing jewel in the sense that they contact a moving part at a point of wear. They likewise agreed in essence that the Resevoil stones are not friction bearing jewels because the properly installed Resevoil stone does not touch a moving part."

In sum, the Commission found that "the industry looks upon a jewel as a small, hard, highly processed stone placed in a watch movement to contact a moving part at a point of wear." The Commission concluded, therefore, that to describe Resevoil stones as jewels was deceptive. As the opinion of the Commission pointed out, "to qualify for the term 'jewel', as understood by the industry, it is not enough that it serve some useful function. It must perform the function with which the word 'jewel' has long been associated." The order of the Commission was affirmed in a *per curiam* opinion, 276 F.2d 513 (C.A. D.C. 1960), cert. denied, 364 U.S. 829.[2]

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[2] Although the *Tornck* case is the most directly in point, it was not the first time that the Commission had considered the meaning of the term "jewel" in the advertisement of watches. The same definition of "jewel" was adopted in *N. Shure Company*, 12 F.T.C. 105 (1928), and has appeared in at least ten stipulations and consent orders in which parties agreed to cease and desist from representing that watches sold by them contained a stated number of jewels, unless each and every jewel serves "a mechanical purpose as a frictional bearing." 10 F.T.C. 583-585 (1926); 10 F.T.C. 590, 593 (1926); 10 F.T.C. 593, 596 (1926); 10 F.T.C. 603, 606 (1926); 11 F.T.C. 494, 497 (1926); *Bulova Watch Co.*, 16 F.T.C. 528, 532

On the basis of the Commission's decision in *Tornek*, the long history of similar Commission orders, and the additional testimony taken in this proceeding, the examiner held that the respondents' representation of the stones in the Resevoil device as "jewels" was deceptive and in violation of the Federal Trade Commission Act.

Respondents appeal from this finding of the examiner on four principal grounds: first, that complaint counsel failed to establish the meaning of the term "jewel" in the watch trade; second, that the opinion of the Court of Appeals in the *Tornek* case modified the Commission's definition; third, that regardless of the meaning of the term "jewel", respondents' advertisements were not the same as those challenged in *Tornek* and were not deceptive; and fourth that respondents must be permitted to call the stones in the Resevoil device "jewels" since this is the way they are described in the Resevoil patent and in fact the only way in which they can be described.[3]

We find no merit in any of these contentions. The examiner properly relied upon *Tornek* and the other prior Commission cases in determining the meaning of the term "jewel" as used in the watch trade. "The facts in that regard obviously do not vary, depending on whether Seller X rather than Y happens to be the respondent." *Manco Watch Strap Co., Inc., et al.*, Docket 7785, March 13, 1962,

(1932); *Roseman Enterprises Company*, 52 F.T.C. 467, 471 (1955); *Windsor Pen Corporation*, 52 F.T.C. 655, 658 (1956); *Cimier Watch Corp.*, 54 F.T.C. 542, 544 (1957); *World Wide Watch Co.*, 55 F.T.C. 1072, 1074 (1959).

[3] In its "Exceptions to Examiner's Findings", respondents deny that either Waltham or "interests controlling Hallmark" ever obtained any interest in the Resevoil patents. But the issue in this proceeding is the description by respondents of the stones contained in the Resevoil devices incorporated in their watches. The ownership of the Resevoil patents is obviously irrelevant to this issue.

The testimony and other evidence in the present proceeding serve only to corroborate the meaning of the term "jewel" which the Commission found in *Tornek;* and, in any event, are sufficient in themselves to support the examiner's finding.

Nor can we agree that the definition of the term "jewel" was in any way modified by the opinion of the Court of Appeals in the *Tornek* case. The court stated:

> "Examination of the testimony before the Federal Trade Commission shows clearly that in the 21-jewel watch commonly sold by others in the trade there are no jewels that do not have either a function of bearing or a function of protection against wear from friction, and that it is only stones that perform these functions that are properly called 'jewels' in the watch industry. "As to the Resevoil device in question, convincing evidence indicated that the four stones of the Resevoil did not serve a mechanical function of bearing or a protection against frictional wear. Petitioner's statement that the Resevoil watches were 21-jewel watches is therefore misleading."

Respondents claim that since the Resevoil stones have "a function of protection against wear from friction", the court's opinion permits them to be described as jewels. But the court was obviously referring to protection from wear by reason of the qualities which the Commission found to be the characteristics of jewels, i.e., their hardness and imperviousness to wear. Had it disagreed with the Commission's definition, the Court of Appeals would not have granted enforcement of the Commission's order, which required that each "jewel" serve "a mechanical purpose as a frictional bearing".[1]

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[1] A petition for rehearing which contended there was an inconsistency between the Commission's and the court's definition of "jewel" was denied (March 23, 1960).

Although respondents' advertisements were slightly different from those in *Zenith*, their representation of the stones in the Reservoir device as "jewels" was no less deceptive. Respondents' intimation (Brief, p. 7) that an asterisk followed by a clear and conspicuous explanation of the type of jewels concerned, appeared after the word "jewel" in all of its advertisements is not substantiated by the record. To the casual reader the phrase that would stand out in many of these advertisements is "25 jewel". Even if the reader went further he would find no statement that any of these jewels were not the usual friction-bearing jewels, but only that some of them were "oil-reserve jewels", a phrase which, this record makes clear, has no meaning in the watch trade. As the Commission recently had occasion to point out, *Giant Food, Inc.*, Docket 7773 (June 13, 1962), such "explanations" or "disclaimers" are not likely to save the casual reader from being misled. The record in this case plainly shows that respondents' "explanation" of the term "25 jewel" failed to avoid the deception inherent in their advertisements.

Finally, description of the Reservoir stones as jewels cannot be justified on the ground that they are so described in the Reservoir patent. The patent was not a license to advertise watches containing the device in any particular manner. *Cf., Decker v. Federal Trade Commission*, 176 F.2d 461 (C.A. D.C. 1949), cert. denied, 338 U.S. 878. If respondents wish to describe the Reservoir device in advertisements for their watches, they must do so truthfully. The stones in this device may be described as what they are, tiny bits of synthetic material. They may not be described by a term, whether it appears in the patent or not, which accurately reflects neither their composition nor their function.

II.

Complaint counsel appeals from the examiner's limita-

tion of the order to "jewels" in the Resevoil or similar devices. The examiner gave no reason for this limitation. We agree that it is unnecessarily restrictive. The violation alleged and proved in this record is the representation as "jewels" of stones which do not perform a mechanical purpose to reduce friction and wear. The record shows that the practice of "up-jeweling" has been accomplished in many ways, of which the Resevoil device is only one. In the *Torniek* case and in the other proceedings cited above which have involved the use of the term "jewel" in the sale of watches the Commission's orders have prohibited any misrepresentation of the number of jewels in the respondents' watches. We believe that, in view of the nature of the misrepresentations shown by the record, such an order is necessary here to protect the public.[5]

III.

On the second principal charge in the complaint, the examiner found that respondents had used "the old and famous American name 'Waltham' . . . repeatedly in various ways to mislead the public into believing that the old Waltham firm is still manufacturing all parts of its watches in the United States." This finding is compelled by the record. The following excerpts from respondents' advertising and labeling show how they have made use of this name:

> "The 25-jewel Premier by Waltham . . . America's First Watch."
>
> "Waltham, the first American watch company"
>
> "Waltham is the first American standardized watch"

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[5] In the interest of clarity we are modifying the language of the order to make it clear that the term "jewel" is not limited to stones used as bearings, but may also properly be used to describe those which, like the pallet and roller jewels, are employed because of their resistance to wear in making contact with other moving parts.

"Introducing * * *, your new Waltham watch. Precision made to the traditionally high quality specifications of America's first watch maker. It is made by expert watchmakers using scientific methods and precision machinery and embodies the skills developed during Waltham's 102-year existence. Nowhere in the world are there better equipped or more thoroughly experienced craftsmen."

The record shows, and in fact respondents urge, that the name Waltham has, over a period *of 100 years and more, come to be associated by the public with watches manufactured by the famous old American company bearing that name.* As the advertisements quoted above show, the Axler management and Hallmark exploited this common understanding of the name Waltham by repeatedly referring to it as "America's First Watch", made by "the first American watch company", etc. The fact is, however, that the movements of the watches sold by respondents under the name "Waltham" are not made in the United States at all, but are imported from abroad. the sale of such watches under a name long associated by the public with entirely American-made products—an association accentuated by respondents' own advertising—is obviously deceptive. The Commission has always prohibited the use of names which carry false implications of a product's country of origin.[9] The fact that such a name is a trademark is irrelevant. *Cf., Edward P. Paul & Company, Inc.* v. *Federal Trade Commission*, 169 F.2d 294 (C.A.D.C., 1948).

The examiner's order on this phase of the case, simply prohibits respondents from representing "that their watches are manufactured in their entirety in the United States." This prohibition will not suffice to assure discon-

[9] See, *e.g., Standard Sewing Equipment Corp.*, 51 F.T.C. 1012, 1029-31 (1955); *El Mogo Cigar Co.* v. *Federal Trade Commission*, 107 F.2d 429 (C.A.4, 1939); *Alvin M. Hanim*, Docket 7749 (May 12, 1960); *Couristan, Inc.*, Docket 7853 (September 29, 1960).

tinuance of the deception found. As we have pointed out, the name Waltham, in part through respondents' own efforts, has come to be associated by the public with entirely American-made watches. Deception of the public can be avoided only by requiring respondents wherever they use the name "Waltham" in the advertisement or labeling of their watches, to disclose clearly and prominently, the foreign origin of any of the components thereof. Respondents should be prohibited from using the term "American", or any reference to "Waltham", in any *manner or context suggesting that the watches which they sell under the Waltham name are made in the United States.* To provide effective relief these provisions are necessary at least until such time as the harmful effects of respondents' deceptive advertising have been erased. If and when this has been accomplished, the Commission will entertain any application for such modification as may then be appropriate. *Cf., Federal Trade Commission v. National Lead Co.*, 352 U.S. 419.

IV.

The examiner found that no deception was likely to result from respondents' use of the term "ruby" in describing the synthetic stones in their Rosewoil devices, since all of the advertisements containing this expression were addressed to the trade rather than to the general public. Complaint counsel does not challenge the findings that these advertisements were addressed only to the trade, and that those in the trade would not be likely to be deceived by such use of the term "ruby." We can find no reason to reverse the examiner's conclusion on this issue.

The appeal of respondents is denied. The appeal of counsel supporting the complaint is granted in part and denied in part. The findings and conclusions contained in the initial decision, as modified and supplemented by this opinion,

are adopted as the findings and conclusions of the Commission. The order contained in the initial decision is set aside, and an order in conformity with this opinion will be issued.

July 20, 1962

APPENDIX D

UNITED STATES COURT OF APPEALS
SEVENTH CIRCUIT

WALTHAM PRECISION INSTRUMENT COMPANY INC., ET AL., *Petitioners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*

No. 14022

January 8, 1964

B. Paul Noble, Washington, D.C., Seymour Rady, Chicago, Ill., for petitioner.

J. B. Truly, Asst. General Counsel, Louis Russell Harding, II, Attorney, Federal Trade Commission, Washington, D.C., James McI. Henderson, General Counsel, Jno. W. Carter, Jr., Attorney, for the Federal Trade Commission, for respondent.

Before HASTINGS, Chief Judge, and KNOCH and CASTLE, Circuit Judges.

HASTINGS, Chief Judge.

This case is before us on a petition for review of an order issued by the Federal Trade Commission after an administrative proceeding based on an amended complaint charging petitioners[1] and others[2] with unfair acts and practices and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C.A. § 45, 66 Stat. 632.[3]

[1] Pertinent parts of § 5(a) of the Act read:

"(1) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful

Petitioners were charged in the amended complaint with false and deceptive advertising relative to the distribution of watches imported from Switzerland and which carried on the face or dial of the watch the name "Waltham Premier 25." The watches were referred to as "25 jewel Walthams," when in fact they were 17-jewel watches. The watches were represented as being manufactured in their entirety in the United States by the well known and long established Waltham Watch Company, when in fact they were made up of watch movements manufactured in Switzerland and watch cases from either Switzerland or the United States.

After a hearing, the examiner found the allegations of the amended complaint to be true and entered a cease and desist order against petitioners.

Upon review by the full Commission, the examiner's findings were upheld in most particulars and the Commission entered its final order in a slightly modified form.[4]

"(6) The Commission is empowered and directed to prevent persons, partnerships, or corporations, * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

[4] "IT IS ORDERED that respondents' exceptions to the proposed order be, and they hereby are, denied.

"IT IS FURTHER ORDERED that respondents, Waltham Precision Instrument Company, Inc., a Massachusetts corporation, formerly known as Waltham Watch Company; Waltham Watch Company, a Delaware corporation; and Joseph Axler and Melvin Axler, individually and as former officers of said corporation, their agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of watches in commerce, as 'commerce' is defined in the Federal Trade Commission Act, do forthwith cease desist from:

"1. Representing in any manner, directly or indirectly, includ-

A Commission opinion by Commissioner Elman was filed.

Waltham Watch Company, a Massachusetts corporation, had been a widely known manufacturer of watches and clocks for many years in Waltham, Massachusetts. In 1956, it ceased manufacturing watches there. It opened an office in New York City and began purchasing movements from Switzerland and watch cases in both Switzerland and the United States, and to assemble such watches.

In 1956, petitioners Joseph and Melvin Axler, and others associated with them, acquired control of this corporation. They were officers and directors and formulated and con-

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ing any use of a number in the name or names of their watches, that watches manufactured or sold by them contain a designated number of jewels, unless said watches actually contain the stated number of jewels, each and every one of which serves a purpose of protecting against wear from friction by providing a mechanical contact with a moving part at a point of wear.

"2. Using the name 'Waltham' in advertising or in labeling to designate or describe watches manufactured or sold by them, without expressly, clearly, conspicuously, and prominently stating in immediate connection therewith the country of origin of each component of said watches which is not entirely manufactured in the United States.

"3. Using, in advertising or labeling watches manufactured or sold by them, the terms 'America's first watch,' 'the first American watch company,' 'American,' or any similar word or expression, to describe respondents or such watches.

"4. Furnishing any means or instrumentality to others whereby the public may be misled as to any of the matters or things prohibited by the above provisions of this order.

"IT IS FURTHER ORDERED that the allegation of the complaint that respondents' use of the term 'ruby' in describing the stones in their Resevoil device violated Section 5 of the Federal Trade Commission Act be, and it hereby is, dismissed.

"IT IS FURTHER ORDERED that the complaint, insofar as it relates to individual respondents Irving H. Stolz, Seth Harrison and Frank Silver, be, and it hereby is, dismissed."

trolled the policies and practices of the corporation. In the same year the Massachusetts corporation licensed Hallmark, Inc., to use the trademark "Waltham" on watches sold by it in the United States.

About July, 1957, Waltham Watch Company, by means of a "spin-off," transferred its watch business to a new Delaware corporation which adopted the same name. Its office and principal place of business was in New York City; Joseph and Melvin Axler were officers and directors of the Delaware corporation and controlled its operation.

The Massachusetts corporation was renamed Waltham Precision Instrument Company, Inc. It continued in business in Waltham, Massachusetts, engaging in the manufacture of various precision instruments, other than watches.

In 1959, Waltham Watch Company of Delaware was merged with Hallmark, Inc., under the name of Waltham Watch Company. The offices were transferred to Chicago, Illinois. At that time, the Axlers terminated their association with the company.

Most of the advertising and labeling shown in the proceeding record was disseminated during the existence of the Massachusetts corporation as the Waltham Watch Company, and while under control of the Axlers.

The facts pleaded in support of the charges were the facts as they existed prior to July, 1957. However, as shown above, the Delaware corporation succeeded to the watch business of the Massachusetts corporation. The record shows the alleged deceptive advertising was continued after its merger with Hallmark, Inc.

The advertising and distribution of the watches were on a national scale. Typical of such advertising were the following:

"Waltham Premier 25."

"The 25 jewel Premier by Waltham."

"The 25-jewel Premier group has patented oil reserve jewels, a horological development that adds 8 extra ruby jewels to the customary 17 friction-bearing jewels."

"Watches that are worthy successors to the famed, history-rich Waltham creations of the past 107 years."

"Presenting the 25 Jewel Premier by Waltham * * * America's first watch."

"Introducing * * * your new Waltham watch * * * It is made by expert watch makers * * * and embodies the skills developed during Waltham's 102-year existence. Nowhere in the world are there better equipped or more thoroughly experienced craftsmen."

"Waltham, the first American watch company."

The record shows that petitioners' "Waltham" watches contain 17-jewel movements imported from Switzerland. To these movements have been added a so-called "Resevoil" device containing eight additional synthetic stones. The Resevoil device is patented and consists of a small metal plate containing the jewel-like stones whose function is to lubricate pivots or other moving parts of the watch. They do not touch anything and do not serve any mechanical function as a friction bearing.

Petitioners' claim that the stones in the Resevoil device are in fact "jewels" (being described in the patent as such) was determined adversely to their contention by the Commission in In the matter of Allen v. Fornek Company, 55 F. T. C. 1770, 1772-1775 (1959); affirmed Per Curiam, Fornek v. F. T. C., 107 U.S. App.D.C. 267, 276, F.2d 513 (1960), cert. denied 364 U.S. 829, 81 S.Ct. 68, 5 L.Ed.2d 57.

(1) The fact that the patent granted on the Resevoil device described the stones as jewels granted no immunity against misrepresentations in advertisements. Decker v. Federal Trade Commission, 85 U.S.App.D.C. 137, 176 F.2d

461, 463 (1949), cert. denied 338 U.S. 878, 70 S.Ct. 159, 94 L.Ed. 539.

Petitioners contend that the tradename "Waltham" originally meant watches made in Waltham, Massachusetts. By its long use, petitioners argue, it lost this geographic meaning and acquired a secondary meaning as being watches manufactured by the owner of that tradename; hence the Delaware corporation had the right to advertise the watches as "Waltham." This same argument was heard and laid to rest in a recent case in this court concerning the same Delaware corporation. Waltham Watch Company v. F. T. C., 7 Cir., 318 F.2d 28, 31-32 (1963), cert. denied 375 U.S. 944, 84 S.Ct. 349, 11 L.Ed.2d 274 (December 9, 1963.)

(2) Any right petitioners have to use the tradename "Waltham" does not permit its use "in a manner designed to deceive the public," and "(t)hose who put into the hands of others the means by which they may mislead the public, are themselves guilty of a violation of Section 5 of the Federal Trade Commission Act." Id., 318 F.2d at 32.

(3, 4) On consideration of the record as a whole, we conclude that the Commission's findings as to the facts are supported by substantial evidence. On judicial review, therefore, we hold them to be conclusive. Universal Camera Corp. v. N. L. R. B., 340 U.S. 474, 487—491, 71 S.Ct. 456, 95 L.Ed. 456 (1951).

(5) The advertising was published by the Massachusetts Corporation under control of the Axlers: the watch business was subsequently transferred to the Delaware corporation; and the Delaware corporation was merged with Hallmark, Inc. Under the facts of this case, the Commission acted well within its authority in fashioning its order to prevent future deception and to close all roads to its prohibited goal. Waltham Watch Company v. F. T. C.,

supra, 318 F.2d at 32. Petitioners were properly made subject to the Commission order.

(6) Finally, petitioners complain that paragraph 2 of the cease and desist part of the order is confusing and constitutes administrative harassment because they are directed to cease and desist from using the name "Waltham" in advertising or labeling without "prominently stating in immediate connection therewith the country of origin of each *component* of said watches which is not entirely manufactured in the United States." (Emphasis added.)

We think petitioners have misread the meaning of "component" in its use in this phrase. The Commission concedes an oral argument that *the watch movement is a single component* and that the word does not mean each part of the movement. We accept the meaning advanced by the Commission and, with this interpretation, petitioners will not suffer therefrom.

We have considered other contentions presented by petitioners and find them to be without merit.

The order of the Federal Trade Commission is in all respects affirmed. Enforcement will be granted.

Enforcement ordered.

APPENDIX E

In the Supreme Court of the United States

No. _____

OCTOBER TERM, 1963

WALTHAM PRECISION INSTRUMENT CO., ET AL., *Petitioners,*

vs.

FEDERAL TRADE COMMISSION

Order Extending Time to File Petition for Writ of Certiorari

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

May 7th, 1964

/s/ TOM C. CLARK
Associate Justice of the Supreme Court of the United States.

Dated this 7th day of April, 1964

APPENDIX F

15 U. S. C. A. 45(a)

Unfair methods of competition unlawful; prevention by Commission—Declaration of unlawfulness; power to prohibit unfair practices.

(a) Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful.

The Commission is empowered and directed to prevent persons, partnerships, or corporations, except banks, common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to chapter 9 of Title 49, and persons, partnerships, or corporations subject to sections 181-203, 205-228 and 229 of Title 7, except as provided in section 227 of Title 7, from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

APPENDIX G

15 U S C A 45(b)

PROCEEDING BY COMMISSION; MODIFYING AND SETTING ASIDE ORDERS

(b) Whenever the Commission shall have reason to believe that any such person, partnership or corporation has been or is using any unfair method of competition or unfair or deceptive act or practice in commerce, and if it shall appear to the Commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership or corporation a complaint stating its charges in that respect and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the Commission requiring such person, partnership or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership or corporation may make application, and upon good cause shown shall be allowed by the Commission to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the Commission. If upon such hearing the Commission shall be of the opinion that the method of competition or the the act or practice in question is prohibited by sections 41-46 and 47-58 of this title, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership or corporation an order requiring such person, partnership or corporation to cease and desist from using such method of competition or such act or practice. Until the expiration of the time allowed for filing a petition for review, if no such petition has been

duly filed within such time, or if a petition for review has been filed within such time then until the transcript of the record in the proceeding has been filed in a circuit court of appeals of the United States, as hereinafter provided, the Commission may at any time, upon such notice and in such a manner as it shall deem proper, modify or set aside in whole or in part, any report or any order made or issued by it under this section. After the expiration of the time allowed for filing a petition for review, if no such petition has been duly filed within such time, the Commission may at any time, after notice and opportunity for hearing, reopen and alter, modify, or set aside in whole or in part, any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or law have so changed as to require such action or if the public interest shall so require: *Provided, however*, that the said person, partnership or corporation may, within sixty days after service upon him or it of said report or order entered after such a reopening, obtain a review thereof in the appropriate court of appeals of the United States, in the manner provided in subsection (c) of this section.

APPENDIX H

15 U. S. C. A. 1064.

CANCELLATION OF REGISTRATION

A verified petition to cancel a registration of a mark, stating the grounds relied upon, may, upon payment of the prescribed fee, be filed by any person who believes that he is or will be damaged by the registration of a mark on the principal register established by this chapter, or under the Act of March 3, 1881, or the Act of February 20, 1905—

(c) at any time if the registered mark becomes the common descriptive name of an article or substance, or has been abandoned, or its registration was obtained fraudulently or contrary to the provisions of section 1054 of this title or of subsection (a), (b) or (c) of section 1052 of this title for a registration hereunder, or contrary to similar prohibitory provisions of said prior Acts for a registration thereunder, or if the registered mark is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services in connection with which the mark is used; or . . .

(e) at any time in the case of a certification mark on the ground that the registrant (1) does not control, or is not able legitimately to exercise control over, the use of such mark, or (2) engages in the production or marketing of any goods or services to which the certification mark is applied, or (3) permits the use of the certification mark for purposes other than to certify, or (4) discriminately refused to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies:

Provided, That the Federal Trade Commission may apply to cancel on the grounds specified in subsections (c) and (e) of this section any mark registered on the principal

register established by this chapter, and the prescribed fee shall not be required. July 5, 1946, c. 540, Title I, § 14, 60 Stat. 433; Oct. 9, 1962, Pub. L. 87-772, § 9, 76 Stat. 771.

APPENDIX I

15 U. S. C. A. 1115

SAME; REGISTRATION ON PRINCIPAL REGISTER AS EVIDENCE OF EXCLUSIVE RIGHT TO USE MARK; DEFENSES

(a) Any registration issued under the Act of March 3, 1881, or the Act of February 20, 1905, or of a mark registered on the principal register provided by this chapter and owned by a party to an action shall be admissible in evidence and shall be prima facie evidence of registrant's exclusive right to use the registered mark in commerce on the goods or services specified in the registration subject to any conditions or limitations stated therein, but shall not preclude an opposing party from proving any legal or equitable defense or defect which might have been asserted if such mark had not been registered.

(b) If the right to use the registered mark has become incontestable under section 1065 of this title, the registration shall be conclusive evidence of the registrant's exclusive right to use the registered mark in commerce on or in connection with the goods or services specified in the affidavit filed under the provisions of said section 1065 subject to any conditions or limitations stated therein except when one of the following defenses or defects is established:

(1) That the registration or incontestable right to use the mark was obtained fraudulently; or

(2) That the mark has been abandoned by the registrant; or

(3) That the registered mark is being used, by or with the permission of the registrant or a person in privity with the registrant, so as to misrepresent the source of the goods or services in connection with which the mark is used; or

(4) That the use of the name, term, or device charged to be an infringement is a use, otherwise than as a trade or service mark, of the party's individual name, in his own business, or of the individual name of anyone in privity with such party, or of a term or device which is descriptive of and used fairly and in good faith only to describe to users the goods or services of such party, or their geographic origin; or

(5) That the mark whose use by a party is charged as an infringement was adopted without knowledge of the registrant's prior use and has been continuously used by such party or those in privity with him from a date prior to registration of the mark under this chapter or publication of the registered mark under subsection (c) of section 1062 of this title: *Provided, however*, That this defense or defect shall apply only for the area in which such continuous prior use is proved; or

(6) That the mark whose use is charged as an infringement was registered and used prior to the registration under this chapter or publication under subsection (c) of section 1062 of this title of the registered mark of the registrant, and not abandoned: *Provided, however*, that this defense or defect shall apply only for the area in which the mark was used prior to such registration or such publication of the registrant's mark; or

(7) That the mark has been or is being used to violate the anti-trust laws of the United States. July 5, 1946, c. 540, Title VI, § 33, 60 Stat. 438; Oct. 9, 1962, Pub. L. 87-772, § 18, 76 Stat. 774.

APPENDIX J

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 13,858

WALTHAM WATCH COMPANY, a corporation, HARRY ARONSON, individually, and as an officer of said corporation, and LAWRENCE ARONSON, as an officer of said corporation, *Petitioners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*.

Final Decree Affirming and Enforcing Order to Cease and Desist

Waltham Watch Company, a corporation, Harry Aronson, individually and as an officer of said corporation, and Lawrence Aronson, as an officer of said corporation petitioners herein, filed in this Court on August 16, 1962, a petition to review and set aside an order to cease and desist issued against them on June 15, 1962, by the Federal Trade Commission, respondent herein, in a proceeding before it entitled "In the Matter of Waltham Watch Company, a corporation, et al., Docket 7097;" and a copy of said petition having been served upon respondent; and the respondent having thereafter certified and filed in this Court a transcript of the entire record in said proceeding; and the matter having been heard by this Court on briefs and oral argument on May 22, 1963, and this Court having rendered its decision on June 5, 1963;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the prayer of the aforesaid petition to set aside the order of the Federal Trade Commission as to the petitioners herein be, and it hereby is, denied;

It Is Further Ordered, Adjudged and Decreed that the order to cease and desist of the Federal Trade Commission

be, and it hereby is, affirmed, and that petitioners be, a
they hereby are, commanded forthwith to obey said ord
and to comply therewith.

By the Court.

s/ F. Ryan Duffy
United States Circuit Judge

s/ Roger J. Kiley
United States Circuit Judge

s/ Casper Platt
United States District Judge
Sitting on the United States
Court of Appeals for the
Seventh Circuit

Entered: June 28, 1963

A True Copy:
Teste:

Kenneth J. Carbicle
Clerk of the United States Court of
Appeals for the Seventh Circuit

APPENDIX K

BEFORE FEDERAL TRADE COMMISSION

(Caption 7997)

Commissioners:

Paul Rand Dixon, Chairman
Sigurd Anderson
William C. Kern
Philip Elman
Everette MacIntyre

Decision of the Commission and Order to File Report of Compliance

This matter having been heard by the Commission upon the exceptions to the initial decision filed by respondents, Waltham Watch Company, Harry Aronson and Lawrence Aronson, and upon briefs and oral argument in support thereof and in opposition thereto; and

The Commission having determined that the hearing examiner's findings and conclusions are fully substantiated on the record and that the order contained in the initial decision is appropriate in all respect to dispose of this matter:

It is ordered that Respondents' exceptions to the initial decision be, and they hereby are, denied.

It Is Further ordered that the respondents, Waltham Watch Company, a corporation, Lawrence Aronson, as an officer of said corporation, Harry Aronson, individually and as an officer of said corporation, and David Singer and Muriel Singer, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

JOHN W. SHEA,
Secretary

Issued: June 15, 1962

APPENDIX L

BEFORE FEDERAL TRADE COMMISSION.

(Caption—7997)

INITIAL DECISION.

Order.

It Is Further Ordered that Waltham Watch Company, a corporation, and its officers and Harry Aronson, individually and as an officer of said corporation, and Lawrence Aronson as an officer of said corporation, and said respondents' officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the use of the name "Waltham" in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

I. Using or authorizing any person to use the name "Waltham" in connection with the sale of clocks or any other product unless it supervises said use and insures that the name is so utilized that:

1. The public is clearly warned by a statement *immediately in connection therewith*, that the product is not manufactured by the Waltham Watch Company of Waltham, Massachusetts, and,

2. If the product is of foreign origin, the country of origin of the product is clearly and conspicuously disclosed on the product, on the advertising used in offering it for sale, and on any package or container in which the product is enclosed, in such manner that the name of the country of origin will not be hidden, obscured or obliterated.

II. Placing any means or instrumentality in the hands of others whereby they may mislead the public.

as to the manufacturer of any product which they sell, the manufacturer's age, experience and reputation or the country of origin of the product.[3]

It Is Further Ordered that the complaint is dismissed as against respondent, Lawrence Aronson, individually, but not as an officer of respondent Waltham Watch Company.

/s/ Walter K. Bennett,
Hearing Examiner.

November 14, 1961.

APPENDIX M

The Constitution, Article 1, Section 8, Clause 8

...To promote the progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.